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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1058

JOSEPH LUCIGNANO AND EDWARD SKOWRON,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 4a-5a) is reported at 354 F. 2d 1007.

JURISDICTION

The judgment of the court of appeals (Pet. App. 6a-7a) was entered on January 27, 1966. The petition for a writ of certiorari was filed on February 25,

1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence supports the jury's verdict that petitioners participated in a single conspiracy.

2. Whether the trial court erred in refusing, after an *in camera* inspection of the grand jury testimony of two government witnesses, to order the transcripts turned over to petitioners.

3. Whether the trial court erred in refusing to interrogate jurors regarding a newspaper article which appeared during trial in which petitioners were not mentioned.

STATEMENT

Petitioners were convicted, after trial by jury which lasted four weeks, of conspiring to violate 18 U.S.C. 1952 by traveling in and using the facilities of interstate commerce and willfully causing such travel and use by others with intent to promote and carry on extortion in violation of State law. Petitioner Skowron was sentenced to five years' imprisonment, and petitioner Lucignano to three years' imprisonment.

1. *The crime.* Four Philadelphia businessmen—Zavod, Kaplan, Roberts and Colianni—needed money quickly for a real-estate promotion scheme. Through Anthony Stassi, Roberts communicated with Harold Konigsberg, a Bayonne, New Jersey loan shark (App.

18a-19a). Roberts and Zavod went to see Konigsberg in Bayonne, and they arranged a $13,500 loan, to be repaid in thirty days at 8 percent interest with $675 payments to be made weekly (App. 21a). Konigsberg indicated with a loaded revolver and a rubber hose that the borrowers would be subject to physical violence if they defaulted on repayment (App. 22a). Petitioners were present during the transaction and threats (App. 19a), and petitioner Skowron, at Konigsberg's orders, laid hands on Zavod to illustrate the hazards of a default of repayment (Tr. 56). The weekly $675 payments were personally carried by one or another of the borrowers from Philadelphia to Bayonne, where they were received and noted by Lucignano in Skowron's presence (App. 23a-25a). When payments were made by Zavod, Lucignano inquired whom they were from, and was told "Joe from Philadelphia" (App. 24a). Additionally, Lucignano received and logged telephone calls from the borrowers to Konigsberg (App. 42a; Tr. 1703). In many instances, the notations made by Lucignano indicated that interstate calls were made (G.X. G-22A).

When the loan from Konigsberg fell due, the borrowers were unable to make full repayment because their promotion scheme had not been completed (App. 29a). Thereafter, Konigsberg summoned the promoters to Bayonne (App. 34a-35a). Despite telephonic threats from Konigsberg (App. 35a), Zavod did not attend because of illness, but Kaplan and Roberts came. In Skowron's presence, Konigsberg struck Kaplan a number of times with a wire-filled rubber hose and threatened him with death if he did not pay

the money in full by the following Monday (App. 97a-99a). Kaplan then managed to borrow $13,500, which he gave to Konigsberg (App. 99a-100a). Konigsberg thereafter visited Zavod at his home in Philadelphia, and coerced from him a bill of sale to the latter's house, conditioned upon Zavod's paying $13,500 to him by September 30 (App. 35a-37a).

At this point, Zavod spoke with Colianni, from whom Roberts had borrowed money to make partial payments to Konigsberg (App. 28a-29a, 38-39). When Konigsberg again demanded money, Zavod said that he had paid it in Philadelphia. Konigsberg replied, "You are not supposed to give that money to anybody but me. I don't know anybody in Philadelphia" (App. 40a-41a). A meeting was then set up in Philadelphia among the borrowers, Konigsberg, an individual identified only as Konigsberg's "boss", Colianni, and three other individuals in the loan-shark business in Philadelphia (acquitted co-defendants Denaro, Testa and Bruno). The Philadelphia group was displeased that Konigsberg had invaded its territory (Tr. 206). Bruno and Konigsberg's "boss" therefore decided that the borrowers were to pay an additional $15,000 beyond the $13,500 which Kaplan had already paid Konigsberg. Of that amount $4,000 was to go to Konigsberg and $11,000 to Colianni in repayment of the $5,500 which he had advanced to Roberts. Konigsberg was to stay out of Philadelphia and put no further pressure on the borrowers (App. 46a-48a).

The borrowers were still unable to bring the real estate promotion scheme to fruition. After a number

of threats from Colianni and Denaro that they would be unable to hold Konigsberg back much longer, Denaro told Zavod that he would have to tell Konigsberg to collect the debt in his own way (App. 49a-50a). At this point, Zavod advised the F.B.I. of the entire story (App. 50a).

Petitioners and co-defendants Konigsberg, Stassi, Colianni, Denaro and Bruno were indicted on eight counts, the first count charging conspiracy to violate 18 U.S.C. 1952. Konigsberg's trial was severed, and petitioners were convicted on the conspiracy count. The other defendants were acquitted.

2. *The use of grand jury testimony.*

a. At the trial Kaplan testified about a meeting that he and Zavod had with Colianni and Denaro after Zavod had communicated with Colianni. He said that he told the two defendants the story of the loan and that they expressed deep sympathy and promised to try to take care of things (Tr. 608-611, 619; App. 104). When he was asked if he could recall anything else these defendants had said, he testified that he recalled a conversation "but it was not a conversation with Mr. Colianni and Mr. Denaro." At this point, government counsel attempted to refresh the witness' recollection with a report of a statement he had made to the F.B.I. When the defense objected to the F.B.I. statement, the government withdrew the statement and substituted, with leave of court, fourteen lines of his grand jury testimony. After examining the transcript, Kaplan said it did not differ from what he had previously testified. The only ad-

ditional matter he recalled was that he had asked Zavod whether "Mr. A. B. (defendant Bruno) would be contacted", and Colianni had replied, "Yes" (Tr. 622-636; App. 104a-106a).

Zavod had previously testified with regard to this meeting, and had said that he had told Denaro everything that happened and that, as they were leaving, Colianni had said that "Denaro was close with Mr. A. B." (App. 43a-44a).

b. Zavod had testified regarding Konigsberg's reaction to Zavod's communication with the Philadelphia group. See *supra*, p. 4. In redirect examination he was asked if Konigsberg had ever represented that he knew someone in Philadelphia. He first replied, "Not that I can recall." Government counsel was then permitted to use one paragraph of his grand jury testimony to refresh his memory. After examining his grand jury testimony, Zavod answered the question, "No" (App. 121-123; Tr. 918-929).

The trial judge read all the grand jury testimony of Zavod after the defendants requested that he review the transcript for inconsistencies (App. 83a-85a). He also read the grand jury testimony of Kaplan upon a similar request (App. 120-121; Tr. 902-905). In both instances he concluded that the transcripts need not be turned over to the defense (Tr. 731, 973, 1060-1061).[1] The court of appeals also read the grand jury testimony of these witnesses in light of the trial record, and it sustained the trial judge's exercise of discretion (Pet. App. 4a-5a).

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[1] The defense was, however, shown the particular passages used to refresh the witnesses' recollections.

ARGUMENT

1. The indictment charged a single conspiracy to use and cause the use of the facilities of interstate commerce to extort money from the borrowers. Petitioners, Konigsberg and Stassi were alleged to be the original conspirators, and Colianni, Denaro and Bruno were alleged to have joined the conspiracy when they interceded, claimed a share of the proceeds, and used the threat of further violence by Konigsberg in an effort to pressure the borrowers into paying. The jury, by its verdict, acquitted Colianni, Denaro and Bruno of having joined the conspiracy and Stassi of having taken part in its formation. Nevertheless, the evidence supports the verdict of a conspiracy among petitioners and Konigsberg. Petitioners were present when Konigsberg made the loan and threatened the borrowers with physical violence to insure repayment, and petitioner Skowron participated at least to the extent of demonstrating the hazards of default. Skowron was also present when Konigsberg beat and threatened Kaplan in order to extract a payment of $13,500. When the loan was made (in the presence of both petitioners), Zavod indicated that he was taking the money to Philadelphia (Tr. 56). Thereafter, Lucignano received the partial payments in Bayonne with knowledge that they had been brought from Philadelphia. He also received and logged telephone messages from the borrowers, and the contents of his notes indicate that the calls were interstate. There was thus sufficient evidence for the jury to find petitioners participated in

the scheme with Konigsberg with knowledge both of the extortion and of the use of interstate facilities and travel.

2. The court of appeals properly affirmed the district court's disposition of motions pertaining to grand jury testimony of government witnesses. This case does not involve the questions whether, and under what circumstances, trial courts are required to make *in camera* inspection of grand jury testimony of trial witnesses (compare *Dennis* v. *United States*, No. 502, this Term) because the district judge in this case read the grand jury testimony and concluded that it showed no inconsistencies.[2]

Nor did circumstances of this case entitle the defendants, in the interests of justice, to examine the requested grand jury testimony in the absence of inconsistencies. Over eighty pages of prior statements given by Zavod and Kaplan to the F.B.I. were turned over to the defense pursuant to 18 U.S.C. 3500 (Tr. 258-259, 672-673; App. 80a),[3] and cross-examination

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[2] The trial judge was not compelled to make an *in camera* inspection by the law applicable in the Third Circuit, which requires such inspection only upon a showing of a "likelihood of discrepancies," *United States* v. *Boyance*, 329 F. 2d 372, 377, certiorari denied *sub nom. Feldman* v. *United States*, 377 U.S. 965, or other "particularized need." *United States* v. *Bertucci*, 333 F. 2d 292, certiorari denied *sub nom. Doherty* v. *United States*, 379 U.S. 839. The Second Circuit, on the other hand, makes an *in camera* inspection an absolute requirement. *United States* v. *Giampa*, 290 F. 2d 83, 85.

[3] The requirements of that statute do not apply to notes of grand jury testimony. *Pittsburgh Plate Glass Co.* v. *United States*, 360 U.S. 395, 398.

of the two witnesses was extensive, covering over five hundred pages of the trial transcript and consuming approximately one-fourth of the trial.

The government was permitted to show one paragraph of Zavod's grand jury testimony and 14 lines of Kaplan's grand jury testimony to the witnesses to refresh their recollections, and these segments were shown to the defense. This did not compel disclosure of the balance. All that was involved was a small fraction of their testimony which had no bearing on petitioners' guilt but which dealt with the participation of the Philadelphia group in the conspiracy. There was, moreover, no claim at the trial that Kaplan's recollection that Bruno's name had been mentioned at the meeting with defendants Colianni and Denaro opened the door to all of the grand jury testimony. Nor did the single paragraph of Zavod's testimony shown to him during his direct examination lead to any significant change in testimony. In these circumstances, the trial court properly exercised his discretion, in light of the policy favoring grand jury secrecy, in not revealing all of the grand jury testimony of these witnesses.

3. During the trial, a sensational and well publicized murder took place in Philadelphia. A newspaper story linked the slaying to "South Philadelphia rackets people and loan sharks," and co-defendant Bruno was incidentally mentioned by name in the story (App. 185a-187a). Petitioners claim error in the refusal of the trial judge to interrogate the jurors to determine if any of them had read the stories.

Since it would only have suggested to the jurors that there was some relationship between the facts set out in the newspaper story and the trial in which they were participating, it was proper for the district judge to refuse to conduct such an examination. In any event, since Bruno and the other Philadelphia defendants were acquitted, it is clear that the story had no prejudicial effect on the trial. Petitioners, who are from Bayonne, New Jersey, can hardly claim that the story prejudiced them.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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